

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 8TH DAY OF JUNE 1998

BEFORE

THE HON'BLE MR.JUSTICE A.J. SADASHIVA

WRIT PETITION No. 332/1998

BETWEEN:

1. Abdul Wajid, s/o Mohammed  
Fakhruddin, age: major.
2. Abdul Wahab, s/o Mohammed  
Fakhruddin, Age: Major.

Both r/o Gopala Village,  
Kasaba Hobli, Shimoga Tq.,  
& Dist.,

.. Petitioners

(By M/s.Jaypee Associates, Advs.,)

AND:

1. The State of Karnataka by  
its Secretary, Housing &  
Urban Development Dept.,  
M.S.Building, Bangalore-1.
2. The Chairman, Shimoga Urban  
Development Authority, Shimoga.
3. The Commissioner, Shimoga Urban  
Development Authority, Shimoga.
4. The Land Acquisition Officer,  
Shimoga Urban Development  
Authority, Shimoga.

.. Respondents

(By Sri K.H.Jagadish, HCGA, for R1;  
Sri Tajuddin, Adv., for R3 & R4)

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This Writ Petition filed under Articles 226 and 227 of the Constitution of India praying to quash the notification vide Annex.F dt. 11.8.94 by R1 and etc.,


This Writ Petition coming on for Orders this day, the Court made the following :-

O R D E R

Even though this petition is listed for Orders on I.A.I, the same is heard on merits and disposed of by this order, with the consent of the learned Counsel appearing on both the sides.

2. The petitioners have filed this petition for quashing the declaration dated August 11, 1994 issued by the first respondent under sub-section (1) of section 19 of the Karnataka Urban Development Authorities Act, 1987 (hereinafter called "the Act"), inter alia contending that the declaration is invalid and inoperative for having been issued in violation of section 17(5) of the Act.

3. There is no dispute that the land measuring 3 acres 37 guntas in Sy.No.60/2 situated in Gopala Village, Kasaba Hobli, Shimoga Taluk, belong to the petitioners. A preliminary notification was also



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issued under sub-section (1) of section 17 of the Act and published in the gazette under sub-section (3) of section 17 of the Act.

4. The contention of the petitioners is that, they have not been served with any notice even though they have been shown as the owners of the land in the revenue records as required under sub-section (5) of section 17 of the Act. It is their further contention that the respondents in order to push through the acquisition proceedings have adopted high-handed procedure in making it appear that the notice has been served on the holders of the land even though they did not serve any notice.

5. It is contended by Sri.H.B.Sandesh, the learned Counsel appearing for the petitioner that, notice, though, is directed to be issued as per Annexure-A, it has not been served on the petitioner. However, from the copy issued to the petitioners by the Special Land Acquisition Officer it is shown to have been served. In this context he brought to notice my notice that the/dated August 28, 1992 will have a reference as to the publication of notice in the

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newspaper dated September 3, 1992. From the endorsement made on the said notice it is seen that the same has been served on the first petitioner who is stated to have acknowledged under his signature. It is contended that the first petitioner is totally an illiterate man who does not know even to put his signature. In support of their contention the petitioners have produced a registered sale deed dated May 18, 1989 made between the first petitioner and one H.Abdul Rehaman wherein it is shown that the first petitioner had put his left hand thumb impression. However, Sri.Tajuddin, the learned Counsel appearing for the Urban Development Authority has contended that, the notice <sup>has</sup> ~~is~~ served on some adult male member of the family who must have signed in the name of the first petitioner and therefore it should not be treated as not having been served on the petitioner. In the absence of any endorsement to that effect or any affidavit by the officer who served the notice, it is not possible to accede to the contention of Sri.Tajuddin that the

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notice must have been served on an adult member  
the  
of family who might have signed in the name of  
the petitioner. The submission of the learned  
Counsel is without any support but appears to be  
on his imagination.

6. Sub-section (5) of section 17 of the Act  
requires that, the authority shall serve a notice  
on every person whose name appears in the assessment  
list of the local authority or in the land revenue  
register as being primarily liable to pay property  
tax or land revenue assessment on any building or  
land which is proposed to be acquired in executing  
the scheme. It is therefore clear that the service  
of notice on every person whose <sup>name</sup> appears in the land  
revenue register or assessment list of the local  
authority is mandatory so that they shall <sup>be</sup> provided  
with an opportunity <sup>to file objections</sup> ~~of being heard~~ against the  
execution of the scheme, if there is any. The  
respondents did not produce any material to show for  
having served the notice on the petitioners who are  
admittedly the owners of the land and whose name  
appear in the revenue records.

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7. Sri.Tajuddin, the learned Counsel for respondents-3 and 4 has contended that, in view of the decision of this Court in W.Ps. 9362-9365/1995, this petition is liable to be dismissed. The facts and circumstances under which the aforesaid cases are decided are entirely different from the facts of this case including the relief claimed. As both of them are distinguishable from each other, the said decision is of little assistance to the respondents.

8. For the reasons aforesaid, the declaration dated July 30, 1994 published in the Karnataka Gazette dated August 11, 1994 issued as per Annexure-F is hereby quashed only in so far as it relates to the lands bearing Sy.No.60/2 measuring 3 acres 37 guntas belonging to the petitioner and all other consequential proceedings in respect of the said land is declared to be inoperative. However, liberty is reserved to the respondents to issue fresh declaration in respect of the said land after complying with all the statutory provisions of the Act.

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9. In the circumstances of the case, there is no order as to costs.

10. Sri.K.H.Jagadish, the learned HCGA, is permitted to file memo of appearance within four weeks.

Sd/-  
JUDGE

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